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Attorneys for Defendants Romi Mayder,
Silicon Test Systems Inc., and Silicon Test Solutions LLC

United States District Court
Northern District of California, San Jose Division

VERIGY U.S. INC., a Delaware corporation

Plaintiff,

vs.

ROMI OMAR MAYDER, an individual;
WESLEY MAYDER, an individual;
SILICON TEST SYSTEMS INC., a
California corporation; SILICON TEST
SOLUTIONS LLC, a California limited
liability corporation,

Defendants.

Case No. 5:07-cv-04330 (RMW) (HRL)

**Declaration of Kevin M. Pasquinelli in Support
of Defendants' Reply Brief Re: Motion to
Compel Production of Responsive Documents**

Date: June 10, 2008

Time: 10:00 a.m.

Judge: Hon. Howard R. Lloyd

Ctrm: 2

Trial Date: None Set

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1 I, Kevin M. Pasquinelli, declare as follows:

2 1. I am an attorney licensed to practice law before the courts of the State of California. I
3 am an associate with the law firm of Mount & Stoelker, P.C. I have personal knowledge of the
4 facts set forth in this declaration, and if called to do so, I could and would competently testify
5 thereto.

6 2. I submit this declaration in support of *Defendants' Reply Brief to Verigy's Opposition*
7 *to Defendants Motion to Compel Amended Responses and Production of Responsive Documents.*

8 3. A CMC was held, as scheduled, on 5/23/2008 with the Honorable Judge Whyte with
9 the parties in this case.

10 4. At the 5/23/2008 CMC a date for jury trial was set for December 8, 2008, or
11 alternatively December 15, 2008 for a court trial.

12 5. Judge Whyte held at the 5/23/2008 CMC that both parties would be limited to 33
13 Additional Requests for Admission. As such, Verigy has withdrawn its Motion for Protection
14 from answering the pending RFA's and Defendants are considering which RFA's to resubmit, if
15 any.

16 6. In the 3/14/2008 CMC the Honorable Judge Whyte ordered Verigy to narrow the
17 scope of its Initial 2019.210 Statement.

18 7. I never stated to opposing counsel that "it made no sense to maintain a motion to
19 compel document requests directed toward Verigy's Initial Trade Secret Disclosure once the
20 amended disclosure was served."

21 8. On 5/13/2008 Verigy petitioned this Court to shorten time to hear its Motion for
22 protection from responding to RFA's to June 10th, 2008, so that it could be combined with the
23 hearing of this dispute

24 9. On 5/16/2008 Defendants opposed Verigy's Motion to Shorten Time.
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28

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1 10. On 5/20/2008 this Court denied Verigy's Motion to Shorten Time. Attached as Exhibit
2 A is a true and correct copy of the notification from the ECF system.

3 11. Attached as Exhibit B is a true and correct copy of an email I received from Ms.
4 Melinda Morton reserving the right to reassert any trade secret claim if evidence was is found
5 "related to one of the trade secrets listed in Plaintiffs' Initial 2019.210 disclosure."
6

7 12. Attached as Exhibit C is a true and correct copy of the Honorable Judge Whyte's
8 minute order from the 3/14/2008 CMC with the parties.

9 13. Defendants answered and counter claimed on 9/13/2007.

10 14. Without changing its answer or counter claims, Defendants filed amended defenses on
11 3/25/2008.

12 15. Subsequently, Verigy notified Defendants that the amended defenses might be in
13 technical violation of L.R. 10-1 which requires that any amended pleading be filed in its entirety.
14 Rather than have motion practice on this point Verigy requested Defendants consolidate its
15 pleadings to comply with the order. Attached as Exhibit D is a true and correct copy of the email I
16 received from Ms. Melinda Morton requesting a corrected pleading to comply with L.R. 10-1.
17

18 16. Defendants filed a corrected pleading, with no substantive changes, on May 16, 2008.

19 17. I declare under penalty of perjury under the laws of the United States of America that
20 the foregoing is true and correct and that this declaration was executed this 27th day of May, 2008
21 in San Jose, California.
22

23 _____
 /s/

24 Kevin M. Pasquinelli
25
26
27
28

Exhibits List

Exhibit A: ECF Notice of Denial of Motion to Shorten Time

Exhibit B: Email from Ms. Melinda Morton reserving the right to reassert any trade secret claim if evidence was is found “related to one of the trade secrets listed in Plaintiffs’ Initial 2019.210 disclosure.”

Exhibit C: Honorable Judge Whyte’s minute order from the 3/14/2008 CMC.

Exhibit D: Email from Ms. Melinda Morton requesting a corrected pleading to comply with L.R. 10-1

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From: ECF-CAND@cand.uscourts.gov
To: efiling@cand.uscourts.gov;
Subject: Activity in Case 5:07-cv-04330-
RMW Verigy US, Inc. v. Mayder, et al Order on Motion to Shorten Time
Date: Tuesday, May 20, 2008 3:18:56 PM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court
Northern District of California
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If there are **two** hyperlinks below, the first will lead to the docket and the second will lead to an e-filed document.

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second hyperlink,
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electronic document
available .***

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The following transaction was received from entered on 5/20/2008 3:18 PM and filed on 5/20/2008

Case Name: Verigy US, Inc. v. Mayder, et al

Case Number: [5:07-cv-4330](#)

Filer:

Document Number: [208](#)

Docket Text:

ORDER by Magistrate Judge Howard R. Lloyd denying [202] Plaintiff's Motion for an Order Shortening Time. Plaintiff's motion for protective order [201] set for hearing on 6/17/2008. Briefing to proceed in accordance with the court's Civil Local Rules. Defendant's request for attorney's fees incurred in connection with plaintiff's motion for shortened time is denied. (hrllc2, COURT STAFF) (Filed on 5/20/2008)

5:07-cv-4330 Notice has been electronically mailed to:

Daniel J. Bergeson dbergeson@be-law.com, swalker@be-law.com

Daniel Harlan Fingerman dfingerman@mount.com, mmcmanus@mount.com

John W. Fowler jfowler@be-law.com, swalker@be-law.com

Melinda Mae Morton mmorton@be-law.com, gsimmons@be-law.com

Daniel S. Mount dmount@mount.com, mmcmanus@mount.com

Kevin Martin Pasquinelli kpasquinelli@mount.com

Jack Russo jrusso@computerlaw.com, mrisch@computerlaw.com

Kathryn G. Spelman kspelman@mount.com, mmcmanus@mount.com

Michael William Stebbins mstebbins@be-law.com, vross@be-law.com

5:07-cv-4330 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:

Main Document

Original filename:

G:\HRLLC2\Orders\2008\07-04330.7.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=5/20/2008] [FileNumber=4401836-0]
[958432824fb286de204fd6eaba60235b2f157e1cdbb71d3480712674a03bad919fe64
0c24f91c988be16ff8c9bbaccc1d8e5b0da471df877cf63164ce0f924c2]]

From: [Mindy Morton](#)
To: [Kevin M. Pasquinelli](#);
cc: [Michael Stebbins](#);
[Gail C. Simmons](#);
Subject: RE: Follow up on Stipulation
Date: Friday, May 09, 2008 1:44:56 PM

Kevin,

This is not what we discussed. First, there is no provision regarding the situation we discussed where defendants later produce documents relating to one of the trade secrets listed on the initial 2019 list. Second, you do not address the approximately 310 RFAs you propounded, most of which relate to the initial 2019 list. Third, this stipulation does not need to be signed by a Judge under any rules that I am familiar with. Fourth, we will not agree to pay your costs and fees for the motion to compel or for drafting the stipulation. The stipulation could easily have been two paragraphs, and instead, you added a lot of verbiage to which we cannot agree. Further, you knew that the 2019 disclosure was going to be amended before you filed the motion to compel, but you were unwilling to wait to see the amended disclosure and instead filed the motion prematurely. Fifth, the inclusion of the actual language from the initial disclosure and stating that all of that language is withdrawn is inaccurate, as a number of those secrets are included in the amended 2019 list.

Please let me know by the end of the day today whether you are actually willing to negotiate this in good faith. If not, we will proceed with our opposition to your motion to compel, including sanctions, and we will file a motion for a protective order for the second set of RFAs and we will seek sanctions for your lack of good faith under rule 26 in serving them. If we cannot resolve this issue, we would like to set up a time to meet and confer with you on Monday regarding the RFAs so we can file our motion for a protective order.

Here is the text of our proposed stipulation:

1. The parties hereby agree, based on the discovery produced to date, that the only trade secrets at issue in this action are those contained in the Amended 2019.210 disclosure, served on April 21, 2008 (the "Amended 2019.210 Disclosure"), subject to the provisions of Paragraph 2.
2. In the event that documents are produced in discovery after April 21, 2008 that relate to one of the trade secrets listed in Plaintiff's Initial 2019.210 disclosure but not in the Amended 2019.210 Disclosure, Plaintiffs reserve the

right to serve a Second Amended 2019.210 Disclosure. Defendants may take discovery related to any trade secrets contained in the Second Amended Disclosure that were not contained in the Amended 2019.210 Disclosure.

3. Defendants hereby withdraw Requests for Production Nos.____ from Defendants Second Set of Requests for Production. Defendants will also file a notice withdrawing their motion to compel concerning the Second Set of Requests within 2 business days of execution of this stipulation.

4. Defendants also hereby withdraw the Second Set of Requests for Admission in its entirety.

5. Plaintiff agrees that it will not seek sanctions for service of the motion to compel or for service of the Second Set of Requests for Admission.

6. All parties will pay their own costs and fees incurred with respect to these discovery issues.

Mindy M. Morton, Esq.
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From: Kevin M. Pasquinelli [mailto:kpasquinelli@MOUNT.com]
Sent: Fri 5/9/2008 12:31 PM
To: Mindy Morton

Cc: Kevin M. Pasquinelli; Michelle McManus
Subject: RE: Follow up on Stipulation

[Here you go. Needed review from Mr. Mayder.](#)

Kevin

From: Mindy Morton [mailto:mmorton@be-law.com]
Sent: Thursday, May 08, 2008 10:36 AM
To: Kevin M. Pasquinelli
Subject: Follow up on Stipulation

Kevin,
Just wanted to check back in with you regarding the stipulation. I believe you said that you were going to get it to me by Wednesday, and I haven't yet seen a draft.

Thanks,
Mindy

Mindy M. Morton, Esq.
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-FILED

CIVIL MINUTES

DATE: March 14, 2008

Case No. C-07-04330-RMW

JUDGE: Ronald M. Whyte

VERIGY US, INC.

-V- ROMI OMAR MAYDER, et al.

Title

M. Morton

Attorneys Present

D. Mount & K. Pasquinelli

Attorneys Present

COURT CLERK: Jackie Garcia

COURT REPORTER: Not Reported

PROCEEDINGS

CASE MANAGEMENT CONFERENCE

ORDER AFTER HEARING

Hearing Held. The parties had a mediation session and was unsuccessful. The parties are to meet and confer as to the trade secret list. The parties are to do a limited amount of discovery. Plaintiff to do third party subpoena and document request; Defendant to do request for admissions and interrogatories. The Court set a Further Case Management Conference for 5/23/08 @ 10:30 am. The Court to look into the issue of listing damages as stated in the standing order.

DATE REC'D/ORIG 3-19-08

FILE # 81125001

CALND BY mm APPROVD BY KMP

DATE 5/23 0 mc

DATE

DATE

COPY TO CLIENT DSM, KGS DUE, BMP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-FILED

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Attorneys Present

D. Mount & K. Pasquinelli

Attorneys Present

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From: [Mindy Morton](#)
To: [Kevin M. Pasquinelli](#);
[Daniel S. Mount](#);
cc: [Michael Stebbins](#); [John Fowler](#);
Subject: Amended Answer
Date: Thursday, April 17, 2008 1:05:15 PM

Gentlemen,

We have reviewed your amended answer. According to Local Rule 10-1, "Any party filing or moving to file an amended pleading must reproduce the entire proposed pleading and may not incorporate any part of a prior pleading by reference." We do not believe that it was your intent to waive your denials of the allegations in the complaint or your counterclaim, but that is, in effect, what your amended pleading has done (and it does not appear that you have even incorporated the previous answer and counterclaim by reference). In the spirit of professional courtesy, we thought it would be better to inform you of the deficiencies in your pleading rather than file a motion. Please let us know what you intend to do with respect to your pleading.

Regards,
Mindy

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